

Sheehan & Associates, P.C.  
cpatalano@spencersheehan.com

505 Northern Blvd Ste 311, Great Neck NY 11021-5101

tel. 516.303.0552 fax 516.234.7800

MEMO ENDORSED  
August 7, 2020

District Judge Kenneth M. Karas  
United States District Court  
Southern District of New York  
300 Quarropas Street  
White Plains, NY 10601

Re: 7:20-cv-02058-KMK  
Webber v. McDonald's Corporation

Dear District Judge Karas:

This office represents the plaintiff. On Friday, July 31, 2020, defendant served and filed a letter seeking a pre-motion conference to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). In accordance with your Honor's Individual Rules of Practice in Civil Cases ("Individual Rules"), plaintiff is required to serve and file a letter response within seven days.

Consistent with the rules and practices of the Court, which typically consider service of a defendant's pre-motion letter timely service under Rule 12 if served within the time required by the Rule, plaintiff may "amend its pleading once as a matter of course" within 21 days "after service of [defendant's] motion under Rule 12(b)." Fed. R. Civ. P. 15(a)(1)(B); *Solis v. McAleenan*, No. 19-cv-5383 (S.D.N.Y. Dec. 5, 2019) ("Under Rule 15(a)(1)(B), a plaintiff has 21 days after the service of a motion under Rule 12(b) to amend the complaint once as a matter of course."); *Martinez v. LVNV Funding, LLC*, No. 14-cv-00677, 2016 WL 5719718, at \*3 (E.D.N.Y. Sept. 30, 2016); *M.E.S., Inc. v. Liberty Mut. Sur. Group.*, No. 10-cv-0798, 2014 WL 46622 (E.D.N.Y. Jan. 6, 2014), \*2 (noting that a plaintiff's amendment as of right in response to defendant's pre-motion letter seeking dismissal "allow[s] for the more efficient use of the Court's time and resources because the Court need only meet with the Parties once...and the need for the motion may be obviated if the amended pleading deals with Defendants' concerns.").

Plaintiff requested, and defendant consented to, an extension of time to file the amended complaint, until Tuesday, September 29, 2020, 39 days from Friday, August 21, 2020 and a total of 60 days from the date of defendant's motion, Friday, July 31, 2020.

Defendant requested, and plaintiff consented to, an extension of 14 days to answer or respond to until Tuesday, October 27, 2020, 28 days from the date of plaintiff's amended complaint. There have been no previous requests by plaintiff or defendant for extensions of any dates. This request does not affect any other scheduled dates. Thank you.

Granted, but there will be no further extensions of this kind.

So Ordered.



8/10/20

Respectfully submitted,

/s/Christopher Patalano

Christopher Patalano

### Certificate of Service

I certify that on August 7, 2020, I served and/or transmitted the foregoing by the method below to the persons or entities indicated, at their last known address of record (blank where not applicable).

	CM/ECF	First-Class Mail	Email	Fax
Defendant's Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaintiff's Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Courtesy Copy to Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

/s/ Christopher Patalano